

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

ALFONSO BUTLER, JR.

PLAINTIFF

v.

No. 3:05CV00108 JLH

RICHARD BUSBY, et al.

DEFENDANTS

ORDER

This matter is before the Court on defendants' motion to dismiss based on plaintiff's lack of prosecution (DE #15). Plaintiff has filed a response to the motion (DE #25).

In support of the motion, defendants state that they have been unable to effect service of discovery mailed to plaintiff at the Crittenden County Detention Facility, and that such was returned to them, undeliverable. In addition, defendants state that plaintiff notified them of a change in address to Winnfield, Louisiana. Defendants state that plaintiff is in violation of Local Rule 5.5(c)(2), for failing to notify the Court of a change in his address.

In his response, plaintiff states that he has remained in contact with the Court and remains incarcerated at the Crittenden County Correctional Facility. Plaintiff also states that he never filed a change of address to Winnfield, Louisiana, and that this action should not be dismissed.

There is no record on the docket of this case to indicate that plaintiff ever filed a notice of change of address to Louisiana, and according to plaintiff, defendants' allegations of such are false. Therefore, defendants' motion to dismiss will be denied.

Plaintiff also has submitted a letter to the Court asking whether he is required to answer the interrogatories mailed to him by defendants. Fed. R. Civ. P. 33(b)(1) states that "each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event

the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.” Accordingly,

IT IS, THEREFORE, ORDERED that defendants’ motion to dismiss based on plaintiff’s failure to prosecute (DE #15) is hereby DENIED.

IT IS SO ORDERED this 24th day of October, 2005.

A handwritten signature in black ink, appearing to read "J. Leon Holmes", is written over a horizontal line.

UNITED STATES DISTRICT JUDGE